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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1959.

No. 217

CLINTON FOODS, INC., a Delaware Corporation,
Petitioner,

v.

MARVIN YOUNGS,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Eighth Circuit.

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To the United States Court of Appeals for the Eighth Circuit.

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit entered in the above case on April 17, 1959.

OPINION BELOW.

The opinions of the Court of Appeals for the Eighth Circuit (T. R. 84-101) are reported at 266 F. 2d 116.

JURISDICTION.

The judgment of the Court of Appeals was made and entered on April 17, 1959 and a copy thereof is appended hereto in the Appendix, at p. 27. Rehearing was denied by order entered on May 11, 1959 (T. R. 114). The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED.

Respondent sought and recovered damages for injuries allegedly incurred by reason of negligence of petitioner. Jurisdiction of the Federal District Court was based upon diversity of citizenship. Petitioner sought and was denied Judgment Notwithstanding the Verdict, and appealed urging that its duty to respondent, an employee of an independent contractor, was limited to refraining from any act which would render its premises unsafe and warning respondent of any dangers known to it but unknown to him.

In the trial court, and on appeal, petitioner urged that it should have received a directed verdict, contending that it was not negligent for three reasons: (1) respondent was or should have been aware of the danger; (2) he was warned personally of the danger; and (3) his employer was warned of the danger.

A division of the Court of Appeals reversed on July 15, 1958 (App. 28-40). Respondent sought, and was granted a rehearing which was presented to another division which did not pass thereon. The matter was ultimately presented to the Court of Appeals, sitting en banc, which affirmed the majority opinion, holding that jury questions existed as to whether respondent knew of the danger and whether he was personally warned (App. 21). The majority neither

mentioned, nor determined the effect of, the contention that Respondent's employer was warned of the danger. The questions presented are:

1. Whether the Court of Appeals can ignore a contention which, if decided in favor of petitioner, would be determinative of its right to reversal irrespective of the validity of its other contentions.

2. Whether a party has been accorded due process of law where such a contention has not been passed upon.

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED.

Constitution of the United States, Amendment V, the pertinent provision being: "No person shall * * * be deprived of * * * property, without due process of law * * *".

Title 28, U. S. C. 1652, which provides: "The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the Courts of the United States, in cases where they apply."

STATEMENT.

Respondent was an employee of an independent contractor which had been engaged to lay a pipe line on petitioner's property. He was injured when he came in contact with a wire leading into a transformer in an outdoor substation through which the pipe was to run. Petitioner contended that it had warned respondent personally and had warned his foreman; that the foreman had warned respondent; and that the enclosed substation bore a number of signs warning of the danger. Respondent admitted